

BUREAU OF AUTOMOTIVE REPAIR

INITIAL STATEMENT OF REASONS

HEARING DATE: A hearing has not been scheduled in this matter.

SUBJECT MATTER OF PROPOSED REGULATIONS: Consumer Assistance Program Updates

SECTIONS AFFECTED: §3394.3, §3394.4, and §3394.6 of Article 11, Chapter 1, Division 33, Title 16, California Code of Regulations.

BACKGROUND

Regulatory Package Background

The Bureau of Automotive Repair (Bureau) submitted an Emergency Rulemaking File to the Office of Administrative Law (OAL) in August of 2020 which was approved on August 31, 2020. The Bureau is now pursuing this regulatory action to make the emergency regulations permanent.

General Program Information

Air Pollution negatively impacts public health in California. Large quantities of air pollution come from mobile sources, including cars and light duty trucks. The Smog Check Program was implemented in 1984 to reduce pollution caused by vehicle malfunction and emission control equipment tampering. The Bureau of Automotive Repair (Bureau), within the Department of Consumer Affairs (Department), is the state agency charged with the administration and implementation of the Smog Check Program.

The Smog Check Program is designed to reduce emissions by identifying and repairing vehicles that exceed specific emissions standards as set by the California Air Resources Board (ARB). A vehicle that has failed its Smog Check inspection must be repaired and pass a subsequent Smog Check inspection in order to complete the Department of Motor Vehicles' (DMV's) registration renewal process.

In order to assist vehicle owners in complying with the provisions of the Smog Check Program, the Bureau is also charged with administering the Consumer Assistance Program (CAP) pursuant to Health and Safety Code (HSC) sections 44062.1 and 44062.3. CAP has two components: Vehicle Retirement Program (VR) and Repair Assistance Program (RA). Through VR, a vehicle owner can retire a failing vehicle for either \$1,000 or \$1,500, if they meet income eligibility requirements. Through RA, a low-income vehicle owner who meets CAP's eligibility requirements and chooses to repair a

vehicle after it fails a biennial Smog Check inspection may receive up to \$500¹ toward emissions-related repairs at a STAR-certified test-and-repair station² operating under an agreement with the Bureau. The goals of these programs are to reduce air pollution and assist vehicle owners whose vehicles fail the Smog Check inspection.

Addressing the needs of low-income vehicle owners is essential to the success of the Smog Check Program. Failure to address those needs can undermine the success of the Smog Check Program and the effort to enforce vehicle registration laws. Without assistance, many low-income vehicle owners are unable to afford to repair or replace vehicles that fail the Smog Check inspection and as a result, often continue to drive their polluting vehicle with either expired registration tags or registration tags obtained with a fraudulent smog certificate, both of which reduce the pollution control benefits of the Smog Check Program.

By assisting low-income vehicle owners repair their vehicles to pass the Smog Check inspection, RA fills a gap left by the vehicle retirement programs operated by CAP and local Air Pollution Control Districts (APCD).

Many vehicle owners do not benefit from retirement programs because they have neither the credit nor the income to replace their vehicle, even if they retire their vehicle and receive \$1,500 from the VR program. Although the APCD's retire-and-replace programs can provide qualifying individuals additional funds (above \$1,500) for vehicle purchases, they cannot always make up for an individual's lack of income or poor credit.

RA helps low-income vehicle owners by making relatively low-cost repairs to vehicles that fail the Smog Check inspection. Many failing vehicles are mechanically sound and can be cost-effectively repaired for far less than the cost of replacing a vehicle. Proper repairs can result in a significant reduction in harmful vehicle emissions and allow owners to register their vehicles with DMV with valid Smog Check certifications.

Contribution Amount Set by Statute and Regulation

The RA program was created in 1994 by Senate Bill 198 (Kopp, Chapter 28, Statutes of 1994), which set the repair assistance contribution at \$450.

HSC section 44062.1(f) allows the Department to increase its RA contribution above \$450 if it determines the repairs related to failure, including failure of a visible smoke test, are cost-effective. In the year 2000, the RA contribution was increased to \$500, by regulation in order to increase participation. This increase was sufficient to account for inflation between 1994 and 2000; however, it has not been increased since that time.

¹ Emergency Regulations that were approved on August 31, 2019 and expire on June 30, 2020, temporarily raise the maximum state contribution amount from \$500 to either \$900 or \$1,200 depending on vehicle model year.

²A STAR-certified test-and-repair station is a station that meets emission testing performance standards per Title 16 of the California Code of Regulations, section 3392.3.1. The STAR Program was established by Assembly Bill (AB) 2289 (Eng, Chapter 258, Statutes of 2010) and implemented by the Bureau in January 2013.

Impact of Inflation on Repair Costs

Between January 1994 and September 2019, the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Motor Vehicle Maintenance and Repair increased 101.5% compared to 74% for the overall Consumer Price Index. This means that a repair which cost \$450 in 1994 now costs over \$900.

Reduction in RA Program Participation

During the past seven years, utilization of RA by low-income vehicle owners has decreased dramatically. There are fewer applicants, and a smaller percentage of those that do apply are approved. The participation rate among approved applicants dropped from 92% in FY 2011/12 to 44% in FY 2018/19.

Improving Program Effectiveness and Increasing Participation

The RA program is no longer effectively serving its intended purpose. The decrease in participation is related to the current program contribution amount, vehicle owner copay structure, and eligibility requirements. The proposed regulation changes are intended to remedy the problems causing reduced participation and keep this important program active and effective.

The proposed regulation changes will:

- Increase the RA contribution above the current limit of \$500, allowing an additional contribution of up to \$400 for 1976-1995 vehicles and up to \$700 for 1996 and newer vehicles when needed to facilitate higher cost repairs. The maximum contribution for 1995 and older vehicles will be \$900. The maximum contribution for 1996 and newer vehicles will be \$1,200.
- Require that the Bureau concurs that repairs in excess of \$500 are necessary to pass the Smog Check inspection and are cost effective.
- List the reasons why Repair Assistance shall not be awarded.
- Establish what the STAR test-and-repair station may charge for diagnosis, which shall include a Smog Check inspection to confirm the current condition of the vehicle.
- Require STAR test-and-repair stations to perform a Smog Check inspection to confirm the effectiveness of the repairs at no charge to the consumer, and if the vehicle passes the inspection, the consumer shall pay for the certificate of compliance.
- Set the vehicle owner's copay to a minimum of 20% of the cost of diagnosis and repair.
- Modify applicant eligibility requirements to allow participation of vehicles with registration expired up to 365 days.
- Remove applicant eligibility requirements relating to lapses in vehicle registration during the two years preceding the current vehicle registration expiration date.
- Amend the CAP application currently incorporated by reference to reflect the changes elsewhere in this package.

REGULATORY PROPOSAL

I. Amend section 3394.3 of the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 11 as follows:

- (1) Change the title of the section from “State Assistance Limits” to “Vehicle Retirement and Repair Assistance Payment Limits.”

The proposed title more accurately states what the section pertains to. This clarification should reduce potential confusion and make the regulation more concise and easier to comprehend.

- (2) In subsections (a) and (b), change “that” to “who” and delete “of Automotive Repair”.

Changing “that” to “who” is non-substantive because it is a grammatical change as part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, California Code of Regulations (CCR) section 100(a)(4).

“Bureau” means “Bureau of Automotive Repair” and the extra wording “of Automotive Repair” is not necessary in the regulation.

- (3) In subsection (b), replace “will” with “shall”.

Changing “will” to “shall” is non-substantive because it is a grammatical change as part of an effort to “[revise] structure, syntax, cross-reference, grammar, or punctuation” within the meaning of Title 1, California Code of Regulations (CCR) section 100(a)(4). This change is being made throughout this proposed language to establish continuity of language throughout the Bureau’s regulatory language. While “will” and “shall” have the same regulatory effect, using “shall” in all places will avoid possible confusion that the usage of two different words was intended to connote different meanings.

- (4) In subsection (b), delete “licensed smog check test-and-repair station holding valid STAR certification and” and replace with “STAR test-and-repair station”.

The regulation is wordy and the revision does not change its meaning. A “STAR test-and-repair station” is a “licensed smog check test-and-repair station holding valid STAR certification”. This clarification should reduce potential confusion and make the regulation more concise and easier to comprehend.

- (5) In subsection (b), add “Repair Assistance shall not be awarded for the following items:” to clarify the reasons that Assistance will be denied, which are listed as subdivisions (b)(1)-(7) immediately below.

- (6) Subdivision (b)(1): “Repairs necessary to make a vehicle safe to test or testable as specified in section 1.2.3 of the Smog Check Manual referenced in section 3340.45.”

This is necessary to ensure consistency with HSC section 44062.1(b)(2) which specifies that the department shall offer repair cost assistance based upon the cost effectiveness and air quality benefit of the needed repair. Because vehicles that are unsafe to test or are otherwise untestable have not failed the smog test, the Bureau cannot determine the cost-effectiveness and air quality benefit of the necessary repairs.

This change is also necessary to ensure consistency with other regulations. Per CCR section 3394.5(a)(9), a vehicle that is untestable on a BAR 97 Emissions Inspection System (EIS) or an OBD Inspection System (OIS) is not eligible for participation in the RA option of CAP.

- (7) Subdivision (b)(2): “Repairs to tampered emissions control systems as defined by section 3340.41.5.”

This section is required to maintain consistency with existing regulation. Per CCR section 3394.5(b)(1), a vehicle with a tampered emission control system is not eligible for participation in the RA option of CAP.

- (8) Subdivision (b)(3): “Repairs which are recommended based on a diagnosis that fails to comply with section 3340.41(d).”

This is necessary to ensure consistency with HSC section 44062.1(b)(2) which specifies that the Department shall offer repair assistance based upon the cost effectiveness and air quality benefit of the needed repair. It prevents unnecessary repair and expense by requiring that technicians follow proper diagnostic procedures. Here, those procedures are described in 16 CCR section 3340.41(d). Cross-referencing 16 CCR section 3340.41(d) is a way of clearly communicating the expected standard and grounds the Bureau’s review in existing law.

Cross-referencing 16 CCR section 3340.41(d) establishes consistency with current regulations, as all Smog Check technicians are required to comply with 16 CCR section 3340.41(d) when performing Smog Check diagnosis and repair.

- (9) Subdivision (b)(4): “Repairs that are unnecessary to resolve the cause of the Smog Check inspection failure.”

This is necessary to ensure consistency with HSC section 44062.1(b)(2) which specifies that the department shall offer repair assistance based upon

the cost effectiveness and air quality benefit of the needed repair. It prevents charges for vehicle maintenance items that are unrelated to emission failures and unlikely to yield an air quality benefit (e.g., brakes, suspension, some types of engine filters, etc.).

- (10) Subdivision (b)(5): “Parts that have a mark-up greater than the average mark-up for the STAR test-and-repair station conducting the repairs.”

This is necessary to ensure consistency with HSC section 44062.1(b)(2) which specifies that the Department shall offer repair assistance based upon the cost effectiveness and air quality benefit of the needed repair. It ensures that the State is not being charged more for parts compared with the same parts for other customers.

- (11) Subdivision (b)(6): “Sublet repairs that have a mark-up greater than the average mark-up for the STAR test-and-repair station conducting the repairs.”

This is necessary to ensure consistency with HSC section 44062.1(b)(2) which specifies that the Department shall offer repair assistance based upon the cost effectiveness and air quality benefit of the needed repair. It ensures that the state is not being charged more for sublet repairs than other customers are charged for sublet repairs.

- (12) Subdivision (b)(7): “Labor operation times that are greater than the average labor operation times for a particular vehicle type and repair.”

This is necessary to ensure consistency with HSC section 44062.1(b)(2) which specifies that the Department shall offer repair assistance based upon the cost effectiveness and air quality benefit of the needed repair. It ensures that the State is charged no more than the industry average labor hours to perform a particular repair operation.

- (13) Add subsection (c) as follows:

“If the STAR test-and-repair station requests emissions-related repairs in excess of \$500, and after evaluating the criteria listed in subsection (b)(1) through (b)(7) the Bureau concurs that those repairs are necessary to pass the Smog Check inspection, and are cost effective as specified in HSC section 44062.1, then the vehicle owner shall receive additional emissions-related repair services in the following amounts:”

Currently, statute allows the Bureau to exceed the current contribution amount of \$500 if it determines the repairs are cost effective. This proposal requires that the Bureau concur with the station’s determination that the repairs are necessary and through this review, the Bureau will ensure the cost-effectiveness of repairs as repair contribution levels rise. As such, this

regulatory proposal requires STAR stations obtain pre-approval from CAP prior to performing any RA repair or combination of RA repairs exceeding \$500.

Currently, all STAR stations are required to submit a repair notification to CAP after diagnosing the cause of vehicle failure and prior to conducting RA repairs on a vehicle; however, STAR stations do not have to wait for approval to begin making the repairs. All RA invoices go through a post-repair review to determine whether repairs were necessary, effective, and complied with regulation. If the invoices fail the post-repair review or if there are questions regarding the repairs, CAP representatives directly contact the STAR station or refer the case to Bureau Enforcement.

The current method of post-review may continue to be used for any repairs that do not exceed \$500. The Bureau's proposed pre-repair review is intended to ensure that requests for funds in excess of \$500 receive a higher level of scrutiny. Pre-repair review is a more effective method of oversight than post-repair review, because it gives CAP representatives the ability to ask the technicians questions regarding the repairs while the vehicle is in the shop and available for further diagnostic testing so that CAP can better assure the cost-effectiveness of the repairs.

Pre-repair review and authorization of recommended repairs above \$500 will:

- Ensure the cause of failure is properly diagnosed by verifying that STAR stations are either following the emission diagnosis and repair procedures found in the vehicle manufacturer's recommended procedures or in industry-standard reference manuals and periodicals published by nationally recognized repair information providers, as required by CCR section 3340.41(d).
- Prevent the use of state funds for repairs which may fail to significantly reduce vehicle emissions.

This will provide CAP representatives better tools to prevent ineffective repairs and will make it clear to all parties that repairs will not be approved without a thorough diagnosis which demonstrates that the proposed repairs are likely to fix the cause of the Smog Check inspection failure.

(14) Add subdivision (c)(1) as follows:

“Up to four hundred dollars (\$400) for model year 1976-1995 vehicles, and”

Raising the contribution amount from \$500 to \$900 will restore it to near its year 1994 inflation-adjusted value, enabling low-income vehicle owners to afford necessary repairs. When combined with a 20% vehicle owner copay, \$1,125 (\$900 CAP contribution plus \$225 vehicle owner copay) in emission-

related diagnosis and repairs may be covered. This will allow repairs of greater complexity and bring more vehicles into compliance with emission standards.

The comprehensive repairs required to make significant and durable emission reductions often cost significantly more than the current limit of \$500. On average, automotive repair costs have doubled since 1994 as indicated by the Consumer Price Index for Motor Vehicle Maintenance and Repair (See Underlying Data). Moreover, Bureau personnel responsible for repair assistance oversight are in regular communication with STAR stations struggling to make adequate repairs within the current contribution amount. Their experience has shown that multiple repairs are sometimes needed to cure an emission failure, and the total repair cost of such repairs often exceeds \$500.

Some single repairs such as replacing V-8 engine intake manifold gaskets now exceed \$500. However, repairs of complex emission failures resulting from multiple causes frequently exceed \$500. Examples of complex emission repairs might include vehicles requiring:

- Replacement of an oxygen sensor and an exhaust manifold
- Replacing a fuel injector and repairing a fuel evaporation system leak
- Replacing spark plugs and a catalytic converter

Over time, there has been a reduction in program participation because vehicle owners must pay for any repairs in excess of the \$500 contribution. Many vehicle owners no longer apply for CAP because they cannot afford the necessary repairs, even with the \$500 contribution. A 2015 Bureau survey of approved applicants who failed to participate in the program revealed that approved applicants are discouraged from participating in CAP because recommended repairs often exceed the maximum repair contribution. It follows that this inability to afford repairs in excess of \$500 is one of the factors causing the steep drop in applications over the last nine years.

STAR test-and-repair stations often must forgo necessary repairs or make temporary fixes due to customers' lack of funds. These partial repairs may not make significant or durable emission reductions. Raising the contribution amount will better address the needs of low-income vehicle owners and increase RA participation. This will allow for proper repair and registration of more vehicles, as well as reduce the demand for waivers and fraudulent smog certificates. The proper and timely repair of failing vehicles will provide greater reductions in emissions and increase the effectiveness of the Smog Check Program.

(15) Add subdivision (c)(2) as follows:

“Up to seven hundred dollars (\$700) for model year 1996 and newer vehicles.”

This change will provide up to \$1,200 in repair assistance contributions for low-income vehicle owners of 1996 and newer vehicles, when certain high-cost labor operations or high-cost second generation on-board diagnostic system (OBDII) components are deemed necessary for cost-effective emission repair. It will provide the funds necessary to make durable repairs on vehicles that would otherwise receive waivers or incomplete repairs, which in turn will reduce harmful vehicle emissions. It will reduce the demand for fraudulent smog certificates and increase the effectiveness of the Smog Check Program.

Due to the complex technology necessary to meet more stringent emission standards, many 1996 and newer vehicles require more costly repairs than 1995 and older vehicles. Since 1996, ARB has required that most new vehicles come equipped with an upgraded on-board diagnostic system.³ This second-generation on-board diagnostic system is referred to as OBDII. Many vehicle systems and components previously considered non-emission related, such as transmissions, are now an integral part of the emission control system.

Replacement parts on 1996 and newer OBDII vehicles can be more expensive than comparable parts for older vehicles. For example, replacement catalytic converters for OBDII vehicles are generally more expensive than those for non-OBDII vehicles, particularly if there are no aftermarket replacement parts approved by ARB.

Most emission-related repairs on 1996 and newer vehicles can be completed for less than \$1,125 (\$900 CAP contribution plus \$225 vehicle owner copay).

However, the Bureau recently conducted a cost survey of emission related repairs on 1996 and newer vehicles⁴, which showed that diagnostic and repair costs exceeded \$1,125, parts and labor, for 18% of vehicles requiring only catalytic converter replacement, and 52% of the vehicles that required both a catalytic converter and other emission repairs. In that same survey, the majority of transmission repairs and mechanical repairs exceeded \$1,125.

This proposal is needed to allow for the higher-cost repairs occasionally required to bring 1996 and newer vehicles into emission compliance. When combined with the 20% vehicle owner copay, it will provide up to \$1,500 in

³An on-board diagnostic system is an emission-related engine-control diagnostic system, which utilizes an on-board network of computers, sensors, and control devices to monitor various emission-related parameters. The first generation of these systems came into general use in the 1980s.

⁴See Underlying Data Attachment 3.

emission-related repairs (\$1,200 CAP contribution and \$300 vehicle owner copay). Vehicles from 1996 and newer are better candidates for increased expenditure than older vehicles for the following reasons:

- OBDII vehicles are designed to have lower emissions than pre-OBDII vehicles. However, when OBDII systems malfunction, these vehicles can pollute as much as pre-OBDII vehicles. This means that a proper repair can yield significant emission reductions.
- In general, newer vehicles have less accumulated wear and are in better condition than older vehicles. Additionally, advances in technology tend to improve vehicle life expectancy. This means that after emissions-related repairs newer vehicles will, on average, remain in regular use longer than older vehicles. Thus, properly repairing 1996 and newer vehicles and bringing their emissions within specification will have more long-term air pollution control benefits than repairing 1995 and older vehicles. Although this same argument is generally true for any two different model-year vehicles, the 1995-1996 transition point was chosen because there were significant technology changes between the two model years.
- The Smog Check inspection extracts more test data from 1996 and newer OBDII vehicles than from older vehicles, allowing the Bureau to better validate a repair shop's diagnosis and repair recommendations.

Allowing an additional \$700 in repair assistance contributions for 1996 and newer vehicles will allow CAP to approve certain high-cost repairs such as catalytic converter replacement when diagnosis shows that significant emission reduction is obtainable. The Bureau will ensure the cost-effective expenditure of funds through the use of a pre-approval process described above in section (l)(5) of this Initial Statement of Reasons.

For 1996 and newer vehicles, the Smog Check inspection captures OBDII system self-diagnostic data. By analyzing OBDII data from tests and STAR repair station diagnostic information, CAP representatives can better verify the necessity and cost-effectiveness of proposed repairs on 1996 and newer vehicles.

Given the enhanced ability to monitor the cost-effectiveness of repairs on 1996 and newer vehicles, and the higher cost associated with certain repairs on those vehicles, it is appropriate to allocate additional funds for repairs which are deemed more cost effective.

(16) Add subsection (d) and (e) as follows:

“The STAR test-and-repair station’s charge for diagnosis shall be a flat fee equaling 1.5 times the station’s posted hourly labor rate for repairs. The diagnosis shall include a Smog Check inspection performed in pre-inspection

mode, as defined by section 1.7.2 of the Smog Check Manual referenced in section 3340.45, to confirm the current condition of the vehicle.”

“Upon completion of repairs, the STAR test-and-repair station shall perform a Smog Check inspection, as specified in section 3340.42, to confirm the effectiveness of the repairs. There shall be no charge to the vehicle owner or the Bureau for this inspection. If the vehicle passes the inspection, the vehicle owner shall pay the certificate of compliance fee as specified in sections 3340.35 and 3340.35.1.”

A pre-repair Smog Check inspection, a diagnosis, and a post-repair Smog Check inspection are necessary in order to determine the proper repair strategy and confirm repair effectiveness. These two sections require that a station perform both the pre and post repair inspections. In addition, these sections effectively set a flat fee for the diagnosis and inspections based upon the station’s posted hourly rate for repairs.

A fixed diagnostic fee is necessary because there is no standard diagnostic time applicable to most emission failures. Diagnostic times vary according to technician expertise, the sophistication of repair facility diagnostic testing equipment, and the difficulty of the diagnostic problem. Without an industry standard, limits must be set on the amount of diagnostic time allowed in order to prevent unreasonable charges.

For similar reasons, a fixed fee is necessary for a pre-repair Smog Check inspection and an after-repair Smog Check inspection. There is no standard fee for the time and overall cost of the smog check test. Charges vary widely from station to station. Without an industry standard, limits must be set on the inspection fees in order to prevent unreasonable charges.

The actual time spent on diagnosis, pre-repair baseline Smog Check inspections, and after repair inspections will vary from station to station and according to the difficulty of the diagnosis. However, the flat diagnostic fee is set at 1.5 hours times the hourly rate for repairs because 1.5 hours was the average time charged to motorists by STAR test-and-repair stations for diagnosis, a pre-repair baseline Smog Check inspection, and a post-repair Smog Check inspection for all vehicles participating in CAP in fiscal years 2018-19 and 2019-20.

The purpose of setting a fixed fee for CAP diagnosis and testing is to prevent unreasonable price increases in diagnostic or Smog Check inspection fees which may occur when the State of California takes responsibility for eighty percent (80%) of the fee. The Bureau has found no other way to ensure reasonable charges for diagnosis and Smog Check inspection. The 1.5-hour multiplier is reasonable because it is set based upon thousands of historical charges negotiated between STAR test-and-repair stations and motorists

during the past two years. Additionally, basing the fee upon a multiplier of the hourly rate accounts for different overhead costs between STAR test-and-repair stations due to, among other things, differences in geographic locations.

II. Amend section 3394.4(a) of the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 11 as follows:

(1) Amend subdivision (a)(4) as follows:

“The applicant must pay a minimum of twenty percent (20%) of the total cost of diagnosis and repair of the emissions-related failure as co-payment for participating in the Repair Assistance option. Once the Bureau’s eighty percent (80%) portion of the diagnosis and repair pursuant to HSC section 44094(b)(1) has reached the maximum amount as defined by section 3394.3(c), all additional costs shall be borne by the applicant. The co-payment shall be paid directly to the station that performs the state-subsidized emissions-related repair work under an agreement with the Bureau.”

This will align regulations to match the statutory requirement of HSC section 44094(b)(1) which specifies that the Bureau may pay “up to 80% of the total cost of the repair⁵, as determined by the department...” This means the applicant must pay a minimum of 20% of the cost of repair. Currently, the applicant must pay the total cost of testing and diagnosing of the vehicle. This is the case even if it turns out that the vehicle cannot be repaired within the contribution amount. The diagnostic fee is a substantial amount of money for a person with low income to commit without certainty that it will result in usable transportation. Surveys conducted by the Bureau have shown the uncertainty regarding the benefit of paying up-front costs discourages vehicle owners from participating in RA. Hence, the direct 80% – 20% split of costs between CAP and the applicant is the simplest way to meet the statutory requirements when dealing with varying repair costs. Moreover, the participant is not required to pay 100% of the testing and diagnosis. At the time of the diagnosis, the vehicle owner will only pay for 20% of the diagnostic fee. The vehicle owner will only commit themselves to paying additional fees after they (and CAP) have approved the recommended repairs. The proposed language also clarifies that the eighty percent coverage extends only to the maximum dollar amount allowed under existing law, avoiding the possibility the regulation may be interpreted to mean the Bureau would cover expenses regardless of the total cost.

By adding “-” in “emissions-related” and “state-subsidized”, the word “an” next to “agreement”, and capitalizing the “b” in “bureau”, BAR is making non-substantive changes as part of an effort to “[revise] structure, syntax, cross-reference,

⁵ The Bureau has determined that the “total cost of repair” includes diagnosis, as it is a necessary component of emission repair.

grammar, or punctuation” within the meaning of Title 1, California Code of Regulations section 100(a)(4). This is necessary to maintain consistency and adhere to proper grammar rules for improved understanding and compliance.

(2) Amend subdivision (a)(5)(B) as follows:

“Be currently registered with the Department of Motor Vehicles with a valid and unexpired registration sticker, or have all fees paid to the Department of Motor Vehicles and not have a registration that has been expired more than ~~120~~365 days.”

RA eligibility requirements are based, in part, upon HSC section 44094, which requires registration in California for at least 24 months.⁶ It does not restrict lapses and it does not state that the registration must be current. Under current RA regulation, 16 CCR 3394.4 (a)(5)(A), program eligibility is limited to vehicles that have failed a biennial inspection. This ensures a vehicle has been registered in California for 24 months, which is sufficient to comply with statutory requirements.

Extending RA eligibility to vehicles with registration expired up to 365 days will better accomplish the goals of the RA program. It will increase RA participation, allowing more low-income vehicle owners to pass Smog Check and bring their vehicles into emissions compliance. It will reduce air pollution by ensuring these vehicles are repaired properly, and as quickly as possible.

The current 120-day limit excludes too many of the applicants who need the program the most. In FY 2018/19, over 2,100 applicants were denied because their registration had been expired between 120 and 365 days before submitting their RA application.

RA was intended to assist vehicle owners with low income who drive vehicles with expired registrations due to Smog Check failure; however, it was not intended to finance the resurrection of disabled vehicles in long-term storage. Therefore, it is still necessary to limit the eligibility of vehicles with expired registration.

Unfortunately, many low-income individuals have vehicles with expired registration.⁷ They often continue to drive those vehicles for months after

⁶Health and Safety Code section 44094 states, in part, that CAP: “will be available to owners of high polluters that are registered in an area that is subject to an inspection and maintenance program, have been registered for at least 24 months in the district where the credits are to be applied and, are presently operational, and meet other criteria, as determined by the department.” Because pollution reduction credits are not applied to individual districts for RA, registration in CA for at least 24 months in an area requiring biennial inspection has been deemed sufficient to meet the registration restriction of this section.

⁷See Underlying Data Attachment 8 - Denial Reasons Related to Vehicle Registration

expiration because they do not have the funds to repair their vehicle, pass the smog inspection, and complete registration.

Denying these applicants RA benefits is counterproductive, as they will probably continue to drive their vehicles unregistered until they have the funds to repair them. A 365-day limit will allow more low-income individuals to participate in the RA program without encouraging the repair of vehicles that have not been driven in years.

(3) Delete subdivision (a)(5)(C).

Deleting this subsection is necessary because participation in the RA Program has decreased significantly. This section serves no practical purpose and is not required by statute. It needlessly excludes thousands of applicants each year. Restoring RA eligibility to vehicles with lapses in registration will eliminate an unnecessary burden on low-income vehicle owners. It will reduce air pollution by ensuring these vehicles are repaired properly and as quickly as possible.

Many low-income individuals have vehicles with prior lapses in registration because they continued to drive those vehicles with expired registration for months before passing the smog inspection and completing registration. Denying these vehicle owners RA benefits is counterproductive, as they may continue to drive their vehicles unregistered.

Subsection 3394.4(a)(5)(C) was added in 2014 with a group of other amendments that were, in part, intended to simplify CAP applications by making RA and VR eligibility requirements similar. It has had the unintended consequence of reducing RA participation. In Fiscal Year 2018/19, more than 16% of all application denials were due to lapses in registration exceeding 120 days in the prior two years, which excluded over 2,500 applicants.

The statute restricting eligibility on vehicles with substantial lapses in registration pertains only to VR (HSC section 44062.3). This section of the HSC does not apply to RA. RA eligibility requirements are based, in part, upon HSC section 44094, which requires registration in California for at least 24 months.⁸ It does not restrict lapses and it does not state that the registration must be continuous.

Under current RA regulation, 16 CCR 3394.4(a)(5)(A), program eligibility is limited to vehicles that have failed a biennial inspection. This ensures a vehicle

⁸Health and Safety Code section 44094 states, in part, that CAP: "will be available to owners of high polluters that are registered in an area that is subject to an inspection and maintenance program, have been registered for at least 24 months in the district where the credits are to be applied and, are presently operational, and meet other criteria, as determined by the department." Because pollution reduction credits are not applied to individual districts for RA, registration in CA for at least 24 months in an area requiring biennial inspection has been deemed sufficient to meet the registration restriction of this section.

has been registered in California for two years, and it is sufficient to comply with statutory requirements.

III. Amend section 3394.6 of the California Code of Regulations, Title 16, Division 33, Chapter 1, Article 11 to change the incorporated application date from 07/12 to 04/2020. The changes in the application incorporated by reference are necessary to reflect changes elsewhere in this package or to correct outdated references, and are as follows:

- (1) Delete "\$500" and insert "\$1,200" under the "Repair Assistance" checkbox on page 1 of the form. This reflects the change made under proposed section 3394.3(c)(2) and will notify parties filling out the form of the appropriate maximum amount.
- (2) Insert the phrase "model year 1996 or newer." This reflects the change made under proposed section 3394.3(c)(2) and will notify parties filling out the form of the appropriate eligibility conditions.
- (3) Insert the sentence "Income-eligible vehicle owners of model year 1976 through 1995 vehicles may receive up to \$900 in emission-related repairs." This reflects the change made under proposed section 3394.3(c)(1) and will inform parties filling out the form of the correct maximum eligibility for those vehicles.
- (4) Correct the Bureau website listed on the form from "www.smogcheck.ca.gov" to "www.bar.ca.gov." This change is made to correct an outdated reference to a website no longer in operation.
- (5) Correct the revision date on the bottom of the form to reflect the revision date listed in proposed section 3394.6.

CONSIDERATION OF ALTERNATIVES

No reasonable alternative to the regulatory proposal was found to be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

In order to ensure the RA option successfully serves low-income consumers and reduces air pollution, any proposed regulatory changes must accomplish the following three goals: remove unnecessary barriers to consumer participation, incentivize the active participation of STAR-certified test-and-repair stations, and provide a state contribution sufficiently large to enable more complex repairs. None of the alternatives considered below accomplished all three goals.

The Bureau considered taking no action. However, CAP data suggests that the dramatic decrease in RA participation is due to inadequate state contributions, the

consumer copay structure, and unnecessary eligibility criteria. Failure to take action would be contrary to CAP's mandate of reducing the disproportionate burden of compliance with the State's Smog Check program on low-income vehicle owners, many of whom have difficulty repairing their vehicle to bring it into Smog Check program compliance.

The Bureau considered alternatives which only implemented some of the changes recommended in this proposal (e.g., only the change to eligibility requirements, only the change to the consumer copay, only the change to state contribution amounts, or some combination of more than one change). However, none of these alternatives would have completely addressed the needs of low-income consumers, provided STAR stations with sufficient incentive to actively participate, and provided a state contribution sufficiently large to enable more complex repairs.

ECONOMIC IMPACT ASSESSMENT

Creation or Elimination of Jobs Within the State

GC 11346.3(b)(1)(A)

This regulatory proposal will not create or eliminate jobs within the State of California. For existing STAR-certified Smog Check test-and-repair stations, the proposed revisions do not impose any new requirements or prohibitions that would necessitate employee hiring or layoffs.

Creation of New Business or Elimination of Existing Business Within the State

CG 11346.3(b)(1)(B)

This regulatory proposal will not create or eliminate existing businesses within the State of California. For existing STAR-certified Smog Check test-and-repair stations, the proposed revisions do not impose any new requirements or prohibitions that would lead to business closure or to the creation of new businesses.

Expansion of Businesses Currently Doing Business Within the State

GC 11346.3(b)(1)(C)

It is possible that this regulatory proposal will result in a minor expansion of existing businesses within the State of California because the proposed regulation does not unreasonably burden or restrict access to repairs, but is designed to increase access to necessary vehicle repairs by increasing the amount of money available and adjusting when repairs are eligible for assistance, meaning more consumers will be able to afford those repairs, increasing the amount of vehicles that will be repaired.

Benefits of the Regulation to the Health and Welfare of California Residents

GC 11346.3(b)(1)(D)

This regulatory proposal benefits the health and welfare of California residents. The proposal will reduce air pollution by increasing the number of repairs performed on failing vehicles.

Benefits of the Regulation to Worker Safety

GC 11346.3(b)(1)(D)

This regulatory proposal does not directly affect worker safety.

Benefits of the Regulation to the State's Environment

GC 11346.3(b)(1)(D)

As noted above, this regulatory proposal will benefit the state's environments, reducing air pollution by increasing the number of repairs performed on failing vehicles. Revisions to the RA program will expand both amount of money available per eligible vehicle, but will also expand the number of vehicles eligible by broadening how recent the vehicle's registration must be.

Other Benefits

This regulatory proposal will provide additional and more flexible financial assistance to low-income vehicle owners with vehicles that fail the biennial smog test, enabling repairs necessary to register their vehicles.

ADVERSE ECONOMIC IMPACT ASSESSMENT

The Bureau has made an initial determination that the proposed regulatory revision will not have a significant adverse impact on businesses, including small businesses, and will not impact the ability of California businesses to compete with businesses in other states. This regulatory revision is designed to increase the number of smog checks that occur and allows more people to get their vehicle smog checked when they otherwise might not have. If anything, this proposal will provide a minor increase in business revenue.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The Bureau is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with this proposed action. On the contrary, the proposed action would provide more funding for repairing vehicles owned by those with low-income and more income for STAR test-and-repair stations.

ECONOMIC AND FISCAL IMPACT STATEMENT INFORMATION

1. Economic Impact Statement

Number of Businesses Created or Eliminated

There is nothing inherent to this proposed regulatory action that impacts the creation or elimination of businesses. Only STAR-certified Smog Check test-and-repair stations are permitted to enter into an agreement with the Bureau to provide repair services through CAP. The STAR program is voluntary. This proposed regulatory action will result in a greater number of CAP-funded repairs performed by STAR-certified Smog Check test-and-repair stations. As a result, revenue may increase at

some STAR-certified Smog Check test-and-repair stations; however, it will not impact the creation or elimination of businesses.

Geographic Extent of Impact of this Proposal

HSC section 44094 restricts repair assistance to areas that are subject to an inspection and maintenance program. Vehicles from areas not subject to the biennial Smog Check requirements (*i.e.*, Change of Ownership Areas) cannot participate. See Underlying Data: Map of areas subject to biennial smog inspection.

Estimated Dollar Costs of this Proposal

CAP criteria have been modified to increase assistance limits and remove certain eligibility requirements relating to lapses in vehicle registration. Implementation of the proposed regulatory changes does not create any initial costs for businesses that wish to enter the program nor for individual technicians employed by or seeking employment at a STAR-certified Smog Check test-and-repair station. Additionally, the proposed regulations will not create any initial or ongoing operational costs for businesses maintaining STAR certification, or seeking participation in the STAR program, nor create any initial or ongoing costs for individuals employed or seeking employment with a STAR station.

Implementation of the proposed regulatory change will not increase costs for any individuals and will decrease costs for individual CAP participants.

Changes to CAP implemented as a result of this proposal are intended to increase participation, and in turn, improve the emissions reduction effectiveness of the Smog Check Program.

Calculation of Fiscal Impact

The calculation of the fiscal impact is based upon estimates of the number of vehicles that will be repaired and the average cost of repairs to be performed in FYs 2021/22 and 2022/23. All assumptions made in deriving these estimates are described in footnotes. See Attachment 10: Fiscal Impact Calculations FY 20-22 through FY 20-23.

Impact of Proposal on the High Polluter Repair or Removal Account

Impact: Expenditures will exceed revenues, thus reducing the current reserve.

The High Polluter Repair or Removal Account will bear the cost of this regulatory proposal. At the beginning of FY 2020/2021, the fund reserve was expected to be \$81.756 million; however, at the beginning of the fiscal year, \$60.602 million was borrowed by the general fund as a consequence of the COVID-related economic crisis, leaving BAR with a reserve of \$18.882 million. See Attachment 11: 2021-22 Governor's Budget.

The increased expenditures described in Attachment 11 will require a \$2,300,000 augmentation of the repair assistance schedule of the High Polluter Repair or Removal Account.

It is estimated that, beginning in FY 2021/2022, this proposal will create a structural deficit. The fund can sustain this structural deficit for several years without impacting CAP's operating budget.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

None.

DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS

During the process of developing these regulations and amendments, the Bureau has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing federal or state regulations.

UNDERLYING DATA:

- 1. Chart showing percent change of the Consumer Price Index (CPI) (Motor Vehicle Maintenance and Repair) January 1994 through September 2019.**
Produced from the US Department of Labor, Bureau of Labor Statistics *Consumer Price Index - All Urban Consumers: Series ID CUUR0000SETD (Motor Vehicle Maintenance and Repair)*.
- 2. United States Department of Labor, Bureau of Labor Statistics: *Consumer Price Index - All Urban Consumers: Series ID CUUR0000SETD (Motor Vehicle Maintenance and Repair)*.** Downloaded from the BLS web site <https://data.bls.gov/pdq/SurveyOutputServlet> on 10/31/19.
- 3. Bureau of Automotive Repair Cost Survey of Typical Repairs Needed to Correct Smog Check Failure** (Data collected June 2017, Report updated November 2019)
- 4. California Air Resources Board Fact Sheet: Air Pollution and Health** (December 2009)
- 5. California Air Resources Board Fact Sheet: Air Pollution Sources, Effects, and Controls** (December 2009)
- 6. California Air Resources Board Fact Sheet: On Board Diagnostics II** (October 28, 2015)
- 7. CAP Annual Supplemental Reports to Legislature** (Fiscal Years 2015, 2016, and 2017)

- 8. Denial Reasons Related to Vehicle Registration (Fiscal Years 2015 - 2019)**
- 9. Map of areas subject to biennial Smog Check inspection (2018)**
- 10. Fiscal Impact Calculations FY 21-22 through FY 22-23**
- 11. 2021-22 Governor's Budget BAR High Polluter Repair or Removal Account Fund Condition**